

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF PENNSYLVANIA

SIDNEY E. SMITH III, et al., executors	)	
of the Estate of Sidney E. Smith, Jr.,	)	
	)	
Plaintiff,	)	Civil Action No. 02-264 Erie
	)	
v.	)	Hon. Sean J. McLaughlin
	)	Hon. Susan Paradise Baxter
UNITED STATES,	)	
	)	
Defendant.	)	

**UNITED STATES' REQUEST FOR SPECIAL  
INTERROGATORIES TO THE JURY**

Defendant, the United States of America, pursuant to Fed. R. Civ. P. 49,  
requests that the special interrogatories attached hereto be presented to the jury.  
The United States reserves the right to request additional special interrogatories  
and to request the withdrawal or modification of any of the following special  
interrogatories if the trial of this case should make such action appropriate.

Dated: September 16, 2005

Respectfully submitted,

MARY BETH BUCHANAN  
United States Attorney

/s/ Lindsey W. Cooper Jr.  
IVAN C. DALE  
LINDSEY W. COOPER JR.  
Trial Attorneys, Tax Division  
U.S. Department of Justice,  
P.O. Box 227, Ben Franklin Station  
Washington, D.C. 20044  
Tel: (202) 307-6615, (202) 307-6528

/s/ Christy C. Wiegand  
CHRISTY CRISWELL WIEGAND  
Assistant United States Attorney  
700 Grant Street, Suite 400  
Pittsburgh, PA 15219  
Tel: (412) 644-3500

*Counsel for the United States of America*

**CERTIFICATE OF SERVICE**

IT IS CERTIFIED that the UNITED STATES' REQUEST FOR SPECIAL INTERROGATORIES TO THE JURY was served upon counsel for the plaintiffs this 16<sup>th</sup> day of September, 2005, by sending a copy via ECF to counsel for plaintiffs.

\_\_\_\_/s/ Lindsey W. Cooper Jr.\_\_\_\_

**SPECIAL INTERROGATORIES TO THE JURY**

1. Did plaintiffs prove that Sidney Smith Jr. family limited partnership was not a device to transfer stock in Erie Navigation Company to his children for less than full and adequate consideration in money or money's worth?

NO \_\_\_\_\_ .

YES \_\_\_\_\_ .

2. Did plaintiffs prove that the terms of the right of first refusal restrictions contained in the Sidney Smith Jr. family limited partnership agreement are comparable to similar arrangements entered into by unrelated persons in arms-length transactions?

NO \_\_\_\_\_ .

YES \_\_\_\_\_ .

3. Did you answer "YES" to both questions nos. 1 & 2 above?

NO \_\_\_\_\_ . Please go to Jury Verdict Form No. 1.

YES \_\_\_\_\_ . Please go to Jury Verdict Form No. 2.

**JURY VERDICT FORM NO. 1**

Plaintiffs have failed to satisfy section 2703(b)'s safe harbor requirements, and you must value the partnership interests in the Smith FLP that Mr. Smith gave to his children as if restrictive provisions of the right of first refusal were not contained within the partnership agreement.

1. Net asset value of Smith FLP.

a. What was the net asset value of Smith FLP on January 5, 1998, when Mr. Smith gave his children partnership interests in Smith FLP?

**Net asset value of Smith FLP on January 5, 1998 = \_\_\_\_\_ .**

b. What was the net asset value of Smith FLP on December 31, 1998, when Mr. Smith gave his children partnership interests in Smith FLP?

**Net asset value of Smith FLP on December 31, 1998 = \_\_\_\_\_ .**

2. Calculation of fair market value of gifts in the Smith FLP interests transferred on January 5, 1998.

You must determine the appropriate discount to be applied to the net asset value of Smith FLP on January 5, 1998 without taking into account the restrictive provisions of the right of first refusal contained within the partnership agreement.

- a. What is the lack of control discount on January 5, 1998?

**Lack of Control Discount =** \_\_\_\_\_ .

- b. What is the lack of marketability discount on January 5, 1998?

**Lack of Marketability Discount =** \_\_\_\_\_ .

- c. Add the lack of control and marketability discounts in sections 2.a. & 2.b., above, to arrive at a total discount on January 5, 1998.

**Total Discount =** \_\_\_\_\_ .

d. Multiply the net asset value of Smith FLP as indicated in response to question no. 1.a. by the total discount value above to give you the fair market value of Smith FLP on January 5, 1998.

$$\frac{\text{(Net Asset Value)}}{\text{From 1.a.}} \times \frac{\text{(Discount)}}{\text{From 2.c.}} = \frac{\text{(Fair Market Value of Smith FLP)}}{\text{on January 5, 1998}}$$

e. Multiply the fair market value of Smith FLP, calculated above, by 13.37% to determine the value of the gifts made by Mr. Smith to his children on January 5, 1998.

$$\frac{\text{(Fair Market Value Smith FLP)}}{\text{From 2.d.}} \times \frac{13.37\%}{1} = \frac{\text{(Fair Market Value of Gifts)}}{\text{on January 5, 1998}}$$

3. Calculation of fair market value of gifts in the Smith FLP interests transferred on December 31, 1998.

You must determine the appropriate discount to be applied to the net asset value of Smith FLP on December 31, 1998 without taking into account the restrictive provisions of the right of first refusal contained within the partnership agreement.

- a. What is the lack of control discount on December 31, 1998?

**Lack of Control Discount =** \_\_\_\_\_ .

- b. What is the lack of marketability discount on December 31, 1998?

**Lack of Marketability Discount =** \_\_\_\_\_ .

- c. Add the lack of control and marketability discounts in sections 3.a. & 3.b., above, to arrive at a total discount on December 31, 1998.

**Total Discount =** \_\_\_\_\_ .

d. Multiply the net asset value of Smith FLP as indicated in response to question no. 1.b. by the total discount value above to give you the fair market value of Smith FLP on December 31, 1998.

$$\frac{\text{(Net Asset Value)}}{\text{From 1.b.}} \times \frac{\text{(Discount)}}{\text{From 3.c.}} = \frac{\text{(Fair Market Value of Smith FLP)}}{\text{on December 31, 1998}}$$

e. Multiply the fair market value of Smith FLP, calculated above, by 26.74% to determine the value of the gifts made by Mr. Smith to his children on December 31, 1998.

$$\frac{\text{(Fair Market Value Smith FLP)}}{\text{From 3.d.}} \times \frac{26.74\%}{1} = \frac{\text{(Fair Market Value of Gifts)}}{\text{on December 31, 1998}}$$

4. Total Fair Market Value of gifts made by Mr. Smith in 1998.

Add together the fair market value of the gifts made on January 5, 1998 and December 31, 1998 as calculated in Sections 2.e. and 3.e. above.

**Total Fair Market of Gifts in 1998 = \_\_\_\_\_ .**

DATED: September \_\_\_\_, 2005

\_\_\_\_\_  
FOREPERSON OF THE JURY



**JURY VERDICT FORM NO. 2**

Plaintiffs satisfied Section 2703(b)'s safe harbor requirements, and you must value the partnership interests in the Smith FLP that Mr. Smith gave to his children taking into account the restrictive provisions of the right of first refusal contained within the partnership agreement.

1. Net asset value of Smith FLP.

a. What was the net asset value of Smith FLP on January 5, 1998, when Mr. Smith gave his children partnership interests in Smith FLP?

**Net asset value of Smith FLP on January 5, 1998 = \_\_\_\_\_ .**

b. What was the net asset value of Smith FLP on December 31, 1998, when Mr. Smith gave his children partnership interests in Smith FLP?

**Net asset value of Smith FLP on December 31, 1998 = \_\_\_\_\_ .**

2. Calculation of fair market value of gifts in the Smith FLP interests gifted on January 5, 1998.

You must determine the appropriate discount to be applied to the net asset value of Smith FLP on January 5, 1998 taking into account the restrictive provisions of the right of first refusal contained within the partnership agreement.

- a. What is the lack of control discount on January 5, 1998?

**Lack of Control Discount =** \_\_\_\_\_ .

- b. What is the lack of marketability discount on January 5, 1998?

**Lack of Marketability Discount =** \_\_\_\_\_ .

- c. Add the lack of control and marketability discounts in sections 2.a. & 2.b., above, to arrive at a total discount on January 5, 1998.

**Total Discount =** \_\_\_\_\_ .

d. Multiply the net asset value of Smith FLP as indicated in response to question no. 1.a. by the total discount value above to give you the fair market value of Smith FLP on January 5, 1998.

$$\frac{\text{(Net Asset Value)}}{\text{From 1.a.}} \times \frac{\text{(Discount)}}{\text{From 2.c.}} = \frac{\text{(Fair Market Value of Smith FLP)}}{\text{on January 5, 1998}}$$

e. Multiply the fair market value of Smith FLP, calculated above, by 13.37% to determine the value of the gifts made by Mr. Smith to his children on January 5, 1998.

$$\frac{\text{(Fair Market Value Smith FLP)}}{\text{From 2.d.}} \times \frac{13.37\%}{1} = \frac{\text{(Fair Market Value of Gifts)}}{\text{on January 5, 1998}}$$

3. Calculation of fair market value of gifts in the Smith FLP interests transferred on December 31, 1998.

You must determine the appropriate discount to be applied to the net asset value of Smith FLP on December 31, 1998 taking into account the restrictive provisions of the right of first refusal contained within the partnership agreement.

- a. What is the lack of control discount on December 31, 1998?

**Lack of Control Discount =** \_\_\_\_\_ .

- b. What is the lack of marketability discount on December 31, 1998?

**Lack of Marketability Discount =** \_\_\_\_\_ .

- c. Add the lack of control and marketability discounts in sections 3.a. & 3.b., above, to arrive at a total discount on December 31, 1998.

**Total Discount =** \_\_\_\_\_ .

d. Multiply the net asset value of Smith FLP as indicated in response to question no. 1.b. by the total discount value above to give you the fair market value of Smith FLP on December 31, 1998.

$$\frac{\text{(Net Asset Value)}}{\text{From 1.b.}} \times \frac{\text{(Discount)}}{\text{From 3.c.}} = \frac{\text{(Fair Market Value of Smith FLP)}}{\text{on December 31, 1998}}$$

e. Multiply the fair market value of Smith FLP, calculated above, by 26.74% to determine the value of the gifts made by Mr. Smith to his children on December 31, 1998.

$$\frac{\text{(Fair Market Value Smith FLP)}}{\text{From 3.d.}} \times \frac{26.74\%}{1} = \frac{\text{(Fair Market Value of Gifts)}}{\text{on December 31, 1998}}$$

4. Total Fair Market Value of gifts made by Mr. Smith in 1998.

Add together the fair market value of the gifts made on January 5, 1998 and December 31, 1998 as calculated in Sections 2.e. and 3.e. above.

**Total Fair Market of Gifts in 1998 = \_\_\_\_\_ .**

DATED: September \_\_\_\_, 2005

\_\_\_\_\_  
FOREPERSON OF THE JURY